

## WETLANDS COUNCIL

### MINUTES

July 9, 2013

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The Wetlands Council met on Tuesday, July 9, 2013 in Rooms 112, 113, & 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Frank Byron, Ryan Crosbie, Carol Henderson, Deborah Lievens, James Kennedy, Russ St. Pierre, Susan Slack, Thomas Sloan, and Robert Snelling

**Absentees:** Councilors: Sharon Champagne and Seth Prescott,

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball at 9:00 a.m. with introductions and a quorum present.

**1. Approval of Minutes**

- ***Councilor Sloan made a motion to approve the June 11, 2013 minutes, second by Councilor Henderson. Motion passed unanimously with Councilor Crosbie abstaining.***

**2. Public Input: None**

**3. Status Report**

**I. New Appeals**

**Docket No: 13-03 WtC – Kevin and Melanie McNamara**

Subject: 4/4/13 Wetlands Minimum Impact Forestry Notification Decision on Reconsideration

Hearing Officer: Not assigned

Status: May 2, 2013 received Notice of Appeal. 5/3/13 issued insufficient appeal letter. 5/15/13 received revised appeal. 5/16/13 issued receipt of appeal letter. Council to accept or decline appeal at its July 9, 2013 meeting.

- ***Councilor Slack made a motion to accept the appeal, second by Councilor Lievens. Motion passed unanimously.***

**II. Decisions that need to be written/finalized and issued.**

**Docket No: 12-15 WtC – Michael Griffin**

Subject: 5/21/10 Shoreland Impact Permit #2010-00767 issued to Tamra Kennedy

Hearing Officer: David Conley, Esq. appointed by AG on 2/13/13

Status: On Nov. 28, 2012 received Petition for Appeal, which was untimely filed. Nov. 29, 2012 issued receipt of Appeal letter. Dec. 4, 2012 rec'd Appearance for Gretchen Hamel and Motion to Summarily Dispose of Appeal. Council to accept or decline appeal at its Jan. 8, 2013 meeting. 12/14/12 received Objection to DES' Motion to Summarily Dismiss Appeal. January 23, 2013 issued appeal accepted letter. February 26, 2013 received Motion to Dismiss. March 6, 2013 received Objection to DES' Motion to Dismiss. Draft revised Decision was circulated to the Council on April 1, 2013 for review. 4/10/13 issued order granting Motion to Dismiss. 4/18/13 rec'd Motion for Rehearing. 4/29/13 rec'd Objection to Motion for Rehearing. Draft Decision on Motion for Rehearing is before the Council, June 11<sup>th</sup>. Discussion was held. June 11, 2013 issued order on Motion for Rehearing, which is denied.

### **III. Hearings or PHCs Pending**

#### **Docket No: 11-09 WtC – Thomas Morrissey & Margaret Russell, et al**

Hearing Officer: Chip Kimball

Recused: Councilor Kennedy

Status: June 24, 2013 received 6/20/13 NH Supreme Court Decision remanding the appeal back to the Council stating, "Because the Bureau misinterpreted RSA 482-A:3, I(a) and did not consider the total wetlands impact of the proposed project, we vacate and remand to the council for further proceedings consistent with this opinion." July 5, 2013 received letter from Attorney Aslin for the Intervenor. 7/8/13 received letter from Attorney Hawkins for the Appellant. Chairman Kimball read aloud the draft Order of Remand. The Council has no authority to tell the Department what to do by statute or rule, except look at the Supreme Court's decision.

- ***Councilor Sloan made a motion to adopt the Order, second by Councilor Slack. Motion passed unanimously.***

#### **Docket No: 12-07/11-03 WtC – Joseph DeVelis**

Subject: 1/25/11 Administrative Order No. 11-002 WD

Status: Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: David Conley assigned by AG on Nov. 28, 2012 (for consolidated appeals)

Status: Rulings on Motion to Extend Time and Motion to Modify PHO were issued on Nov. 2, 2011 and mailed on Nov. 3, 2011. Hearing was set for March 13, 2012 @ 9 a.m. 3/9/12 Motion was granted and notice sent.

Hearing scheduled for March 13 was continued. Councilor Crosbie spoke with Atty. English regarding Motion to Modify Hearing Date. March 9, 2012 Motion was granted and notice sent. Hearing rescheduled to October 9, 2012 at 10 a.m. Hearing Postponement notice was issued on Sept. 19, 2012. Oct. 2, 2012 received letter from Atty. Bisbee regarding the Hearing Postponement letter. Status carried forward from Docket No. 12-07 WtC-Subject: 6/20/12 Denial on Reconsideration of Permit application #2012-00368. On July 20, 2012 rec'd Notice of Appeal. 7/24/12 issued receipt of appeal letter. 8/15/12 rec'd appearance from Atty. Evan Mulholland. 9/14/12 issued appeal accepted letter. Council voted Nov. 13<sup>th</sup> to consolidate this Docket and Docket No. 12-07 WtC – Joseph DeVelis. 11/13/12 Requested Hearing Officer for consolidated appeals. 12/3/12 sent notice of PHC scheduled for Jan. 28, 2013 at 9 a.m. Pre-Hearing Order (PHO) was issued on January 28, 2013 with notice of Hearing scheduled for April 9, 2013 at 9 a.m. March 11, 2013 received Appellants' Memorandum of Law. 3/25/13 received DES' and Appellants' Witness and Exhibit Lists. April 8, 2013 received Assented-to-Motion to Continue. 4/8/13 issued ruling granting Motion to Continue. 4/9/13 issued notice of rescheduled hearing which is scheduled for June 11, 2013 at 9 a.m. 4/17/13 received Assented to Motion to Amend Witness List. 4/18/13 issued ruling on Motion to Amend, which was granted. June 10, 2013 issued ruling on Appellants' Question of Law. Hearing was held on June 11, 2013 with deliberations scheduled for July 9, 2013. 7/2/13 issued via email, reminder of deliberations being held on July 9<sup>th</sup> at 10 a.m. to Attorneys Bisbee and Mulholland.

#### **Docket No: 12-08 WtC – Renate U. Ranniger**

Subject: 7/25/12 Granting of Shoreland Impact Permit No. 2012-01713 to Anna and James Coleman

Hearing Officer: David Conley, Esq. appointed by AG on 11/28/12

Actions: On Aug. 22, 2012 rec'd Petition for Appeal. 8/29/12 issued insufficient appeal letter. 9/5/12 rec'd added information and appeals clerk issued receipt of appeal letter. 9/24/12 rec'd Appearance from Permittees' Anna and James Coleman. 11/2/12 rec'd Addendum to Petition for Appeal. 11/13/12 Council accepted the appeal and declined to accept Addendum. PHO was issued on 1/28/13 with notice of Hearing scheduled for May 14, 2013 at 9 a.m. Hearing Officer also granted Addendum to Petition for Appeal at the PHC and noted on the PHO. February 26, 13 received Appellant's Second Amended Petition for Appeal. March 29, 2013 received Appellant's Motion for Summary Judgment. April 10, 2013 received Appellant's Motion to Continue. 4/30/13 received Objection to Appellant's Motion to Continue and an Objection to Appellant's Motion for Summary Judgment. 4/30/13 received Appellant's Motion to Defer Close of Record, Appellant's Motion for Second PHC, Appellant's Motion for Late Filing of Exhibit and Motion in Limine. May 1, 2013 received Permittee's Motion to File Witness and Exhibit List Out of Time. 5/2/13 issued ruling on Motion to Continue and Motion for Second PHC which were granted. Second PHC will be held on May 14<sup>th</sup> at 10:30 a.m. 5/13/13 received withdrawal of representation from Darlene Forst and an appearance for Gretchen Hamel. 5/14/13 a 2<sup>nd</sup> PHC was held, parties are to submit a status report by June 10, 2013. 6/10/13 received Appellant's Status Report. 6/17/13 received Permittee's

Response to Appellant's Status report. 6/18/13 received Appellant's Supplement to Status Report. 6/19/13 issued Order on Motion for Summary Judgment, which was granted.

**Docket No: 12-10 WtC – Robert and Katherine Michele**

Subject: 9/4/12 Denial of Reconsideration for permit No. 2007-02868 issued to Joseph and Linda Bremner  
Hearing Officer: David Conley, Esq. appointed by AG on 11/28/12

Actions: On Oct. 4, 2012 rec'd Petition for Appeal. Oct. 5, 2012 issued receipt of appeal letter. Oct. 30, 2012 rec'd Objection to Petition for Appeal. Council accepted appeal with request for complete copies of the relevant court decision to be forwarded to the Council at its Nov. 13, 2012, meeting. Pre-hearing Conference was held on 1/28/13 and continued to May 13, 2013 at 10 a.m. April 2, 2013 received Motion to reschedule Continued Pre-hearing Conference from Appellant. 4/8/13 received Joint Opposition to Appellant's Motion to Reschedule Continued Pre-hearing Conference. 4/9/13 the hearing officer denied Appellants' Motion to Reschedule Continued Pre-hearing Conference. Ruling denying motion was issued 4/9/13. May 8, 2013 sent notice of unexpected conflict, Hearing Officer unable to attend scheduled PHC via email. 5/9/13 sent notice of rescheduled PHC scheduled for 5/17/13. 5/9/13 received Attorney Johnson's request to reschedule via email. 5/13/13 sent notice of newly rescheduled PHC for the same date but a different time. 5/17/13, 2<sup>nd</sup> PHO issued with hearing scheduled for October 8, 2013 at 9 a.m. June 21, 2013 received copy of Cheshire County Superior Court order on Bremner's Motion to Dismiss, which was denied. 6/28/13 received Appellant's, DES' and Permittee's Memorandums of Law.

**Docket No: 12-12 WtC – William & Elizabeth Frago, Trustees-William S. Frago Trust & Elizabeth Hall Frago Trust**

Subject: 9/18/12 Denial of Reconsideration of permit #2011-01677 issued to Hopgood Bixby Shore Family Trust  
Hearing Officer: David Conley, Esq. appointed by AG on 12/12/12

Status: On Oct. 17, 2012 received Petition for Appeal. Oct. 18, 2012 issued receipt of appeal letter. Nov. 6, 2012 rec'd Appearance of Attys. Gregory Smith, Mark Rouvalis and Michael Walls. Also received Motion for Summary Affirmance pursuant to Env-WtC 204.01. Nov. 15, 2012 received Objection to Applicants' Motion for Summary Affirmance. December 13, 2012 issued appeal accepted letter. January 4, 2013 received Appearance from Atty. Allen Brooks. 1/23/13 sent notice of PHC scheduled for February 12, 2013 at 9 a.m. 2/7/13 received Assented-To Motion to Continue. 2/11/13 issued letter regarding Motion to Continue which was granted and PHC was rescheduled to 2/15/13 at 9:30 a.m. PHC was held on 2/15/13 and a hearing was scheduled for July 9, 2013. Notice was given per 2/15/13 PHO. 2/15/13 received Permittee's Pre-hearing Conference Memorandum. March 15, 2013 received Appellants' Motion for Summary Judgment. 3/27/13 received Objection to Appellants' Motion for Summary Judgment. Hearing Officer to act on Motion and Objections. April 22, 2013 received Appellants' Reply to Objection to Appellants' Motion for Summary Judgment. Hearing Officer to act on Motions and Objections. 4/29/13 rec'd Appellees' Sur-Reply to Appellants' Reply to Objection to Appellants' Motion for Summary Judgment. May 28, 2013 received Assented-To Motion to Extend Expert Deadlines. 5/30/13 Assented-To Motion was granted and the parties are to provide an update on settlement discussions by June 17, 2013. 6/17/13 received parties status update via email, stating "The Frago and Hopgood parties have exchanged several proposals but have been unable to reach a settlement. The parties are preparing for the hearing on July 9<sup>th</sup>." 6/24/13 issued order on Motion for Summary Judgment, which was granted.

**IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**Docket No: 10-10 WtC – Donald Lee**

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball assigned by AGO on 1/26/11; David Conley, Esq. appointed by AG on 5/8/13.

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11. Received Suggestion of Bankruptcy on Dec. 5, 2011. On 12/6/11 rec'd withdrawal of appearance from appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court. May 7, 2013 received Motion to Remove Stay from Bankruptcy on the Appeal. 5/8/13 per request from Chairman Kimball, Ms. Scott requested another hearing officer via email. 5/8/13 issued ruling granting Motion to Remove Stay. 5/17/13 issued PHC notice scheduled for 6/12/13 at 10:30 a.m. June 12, 2013 received Summary of Procedural Background from Intervenor. Issued Pre-hearing order on 6/12/13. 6/14/13 issued Further Decision and Order on PHC.

**Docket No: 10-14 WtC – Akwa Marina Yacht Club**

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: David Conley, Esq. appointed by AG on 12/22/11

Status: On Nov. 2, 2011, rec'd DES' addendum to the Witness and Exhibit List. 11-07-11 Assented-to Motion to Continue was filed. Motion to Continue was granted verbally on 11/7/11 and PO will have written ruling out within a few days. Rescheduled hearing for Feb 14, 2012 @ 9 a.m., notice sent on Dec. 30, 2011. Jan 4, 2012, appellant filed Assented-To Motion to Continue. Jan 9, 2012, PO granted Motion to Continue. Hearing has been rescheduled to June 12, 2012 @ 9 a.m., notice given 1/18/12. Hearing was held June 12<sup>th</sup>. Hearing was continued until a settlement agreement is made or either party requests to resume the hearing. The appellant's attorney will update the council within 60 days as to progress (Aug. 11, 2012). 2/8/13 issued Hearing Officer's order for an updated status report to be filed by April 5, 2013. April 4, 2013 received Appellant's status report requesting to submit another report in 60 days. 4/8/13 issued Hearing Officer's Order for an updated status report to be filed by June 4, 2013. 6/4/13 received Appellant's Status Report requesting to submit another report in 60 days. 6/6/13 issued letter granting request to submit an updated status report in 60 days, by August 5, 2013.

**Docket No: 12-14 WtC – Mastoran Corporation and B & P Realty Ventures, LLC**

Subject: 11/8/12 Denial on reconsideration of Denial of Application File #2012-00768

Hearing Officer: David Conley, Esq. appointed by AG on 2/13/13

Status: November 27, 2012 received Notice of Appeal and Motion to Stay Appeal. 11/28/12 issued insufficient appeal letter. December 28, 2012 received supplement to Notice of Appeal and Motion to Stay Appeal. January 3, 2013 issued receipt of revised appeal. Council accepted appeal at its January meeting. January 23, 2013 issued appeal accepted letter. Hearing Officer to rule on Motion to Stay Appeal. March 13, 2013 issued letter regarding the granting of the Motion to Stay Appeal.

**4. Old Business -**

Sunapee Protective Association and The Town of Newbury Appeal - the Supreme Court affirmed our decision.

**5. New Business -**

**a. Wetlands Bureau Report –**

**Collis Adams, Wetlands Bureau Administrator**

There has been a lot of emergency response activity with all the recent rains in the western part of the state along the Connecticut River Valley.

No Staff changes.

Legislation is quiet. Budget has passed with few changes to the Wetlands program.

Funding – accounts are in the black. But Federal funding changes have been scaled back so a couple of positions have had to come back into the fee account which will affect the Wetlands account. The bureau has applied for 2 additional grants.

Rulemaking –

1) Certified Culvert Maintainer Program – rules went through public hearing and now addressing comments to then they will be sent to JLCAR.

2) Overall rules re-write still ongoing. Activities and technical review process are the 2 areas being worked on now. They will then go out to the public this fall for public listening sessions with a draft.

**6. Next Meetings –**

There will be no meeting in August.

The next meeting will either be September 10, 2013 or October 8, 2013

**7. Adjournment**

- ***Councilor Sloan made a motion to adjourn, second by Councilor Lievens. Motion passed unanimously.***

Meeting adjourned at 9:29 a.m.



**WETLANDS COUNCIL  
DELIBERATION MINUTES**

**July 9, 2013**

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The Wetlands Council met for  
Docket No. 12-07/11-03 WtC – Joseph DeVelis Appeal Hearing  
Tuesday, July 9, 2013 in Rooms 112, 113, & 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Councilors: Frank Byron Carol Henderson, James Kennedy, Chairman Chip Kimball, Deborah Lievens, Russ St. Pierre, Susan Slack, Thomas Sloan, and Robert Snelling

**Absentees:** Councilors: Ryan Crosbie, Sharon Champagne, and Seth Prescott

Also present were: Atty. David Conley, Hearings Officer and Paula Scott, Appeals Clerk

The Deliberations were called to order by Hearings Officer David Conley at 10:00 a.m.

The Deliberations concluded at 11:55 p.m.